

CHAPTER 1:

INTRODUCTION

1.1 RESEARCH BACKGROUND

The right to self-determination is the right for a group of people to freely determine and control their political, economic, or socio-cultural future. It has been a part of the vocabulary of international law since the Treaty of Versailles in 1919 and the formation of the League of Nations in 1920 (Ijezie, 2013). During the League of Nations, self-determination only had the status of a political idea, or "an imperative principle of action" (Dersso, 2012).

The idea of the right to self-determination was believed to be first introduced to international law by Woodrow Wilson, the 28th President of the United States (US) in his 14-point statement followed by his famous speech on self-determination in 1918¹ (Avgustin, 2020). This, and various speeches given, raised the hopes of many anti-colonial activists. However, the U.S. and the European leaders embraced self-determination in a conception used to justify the forcible relocation of millions in eastern and southern Europe after 1919 in the service of creating homogeneous nation-states. This resulted in the non-shocking fact that Wilson ignored the hundreds of petitions alike from around the world by activists who hoped to use the post-war

¹ "National aspirations must be respected; people may now be dominated and governed only by their own consent. Self-determination is not a mere phrase; it is an imperative principle of action. " See President Wilson's Message to Congress, 1918.

moment to lend legitimacy to their movements for independence from European colonial rule.

Nevertheless, the idea obtained the status of international legal principle in 1945 by the entry into force of the United Nations Charter (UN Charter) (Shaw, 2017). The right was initially made as an instrument by the United Nations (UN) in their campaign for decolonisation. UN Charter was introduced as the first international legal instrument to enunciate self-determination as a principle of international law² (Dersso, 2012). It has constituted the legal and political basis of the process of decolonisation, which witnessed the emergence of over 60 new states in the second half of the twentieth century.

Decades later, several dozen countries were created on this basis, concretising the right to self-determination of peoples officially, colonised or not. However, in reality, the creation of a new country does not always correspond to objective and legal criteria (Özden & Golay, 2010). In fact, the right to self-determination can be manipulated. Some of the world's leading powers have quickly recognised or dismissed similar independence struggles. This was done in guidance by their strategic interest³ without respect for fellow states' territorial concerns (Chhabra, 2013).

² Commonly regarded as a *jus cogens* rule: That body of peremptory principles or norms from which no derogation is permitted; those norms recognised by the international community as a whole as being fundamental to the maintenance of international legal order.

³ One of the nearest examples is the case of Aceh. Aceh, the northernmost province of Indonesia came through long-suffering armed conflicts for self-determination under the Dutch (1873-1942) and Japanese colonisation (1942-1945). It continued until Aceh joined Indonesia's unitary system in 1945, which was formally initiated by Tgk. Daud Beureueh between 1953-1963, and further to be declared by Tgk. Hasan Tiro on 4th December 1976 under the banner of the Free Aceh Movement (GAM). This struggle was ended by a peace agreement, the Helsinki Memorandum of Understanding (MoU) on 15th August 2005 with the Aceh self-government notion consensus. This long struggle for self-determination was only subdued and stopped due to the 2004 Tsunami. The overlooked case of Aceh demonstrates a lack of

Normatively, the principle of self-determination is stated in the Charter of the United Nations 1945 (the UN), Article 1 (2)⁴ and Article 55⁵. In addition, common Article 1 (1) of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 states that:

“All peoples have the right of self-determination.”

By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development” (Cristescu A., 1981). However, the silence on how the right shall be established made the current practice of exercising the right to self-determination and the formation of a new state justified (Kadir, 2015).

This is further proven when Gladwyn Jebb, the diplomat responsible for British planning for post-war international order stated in one of the drafting papers, in discussing on veto power of the permanent member, that world peace will only be

respect for a hitherto fellow state's interest, based on the favourable and friendlier ally embodied by Indonesia. See Kadir, 2012.

By contrast, Israel was admitted to the United Nations even before it had full control over the region currently within its disputed borders in part out of concern for the mass settlement of Holocaust émigrés. May 11, 1949. Such premature recognition can potentially interfere with a state's internal affairs. For example, the Arbitration Commission on Yugoslavia in 1992 found that Croatia met the necessary conditions for statehood; however, as it only controlled one-third of its claimed territory, some criticized Austria's recognition of it. See Conference on Yugoslavia Arbitration Commission, 1992.

⁴ “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”. See Article 1 (2) of United Nation Charter.

⁵ “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. See Article 55 of United Nation Charter.

achieved by when the Great Powers cooperate (Lee, 1947; Mohny, 2014). Failure to accept it will promise war for the future of the world.

In 2011, the then President of the US, Barack Obama announced a gradual withdrawal of the US troops occupying Afghanistan in the principles of self-determination⁶. However, the fact that citizens in Tunisia, Libya, Egypt and Syria were voicing demands for the end to the authoritarian rule in similar terms proved that Obama shared the same vision as Wilson in his view of self-determination; that is as a source of potential peril, supporting it in principle but ever wary of expansive claims made on its behalf or excesses committed in its name (Simpson B. , 2014).

The endless dispute over this right was due to the fact although national self-determination seems a straightforward moral principle, it is fraught with problems. For instance, after the Munich Agreement in 1938, the Sudeten Germans seceded from Czechoslovakia, invoking the principle of self-determination, and joined Germany, which meant that the mountainous frontier fell under German control – a terrible loss for Czech defences (Joseph S. Nye, 2009). Many of the major self-determination movements of the 20th Century did not go smoothly but resulted in forced or semi-forced transfers of groups of people from one country to another. For example, the expulsion of most of the Palestinian population from the area that became Israel after 1948. This example highlights the connection, in many historical instances, between population transfers and so-called "ethnic cleansing" (Lister, 2015).

⁶ "In all that we do, we must remember that what sets America apart is not solely our power— it is the principles upon which our union was founded. We stand not for empire, but for self-determination." See Remarks by the President on the Way Forward in Afghanistan, 2011.

However, one of the critical issues in exercising the right to self-determination is the biased designation of the people as radicals and terrorists. The lack of specific definitions and methods on how the right can be lawfully exercised in addition to the absence of a universally accepted definition of the term terrorist further escalated the problem. It was not a strange phenomenon where States included and designed the freedom fighters in their territories as part of the terrorists.

1.2 STATEMENT OF THE PROBLEM

As had been stated before, one of the critical issues in exercising the right to self-determination is the biased designation of the people as radicals and terrorists. This problem lies in the fact that there are no international provisions that provide a specific definition or interpretation of the term right to self-determination. This includes to whom the right inheres, how far the right covers and what is the approved method of exercising it.

The only available definition in international law that provided for the right to self-determination, apart from the brief mention in the UN Charter is in the International Covenant on Civil and Political Rights (ICCPR). However, the Covenant had only briefly defined the right as the right to 'freely determine their political status and freely pursue their economic, social and cultural development' (ICCPR 1966). There are no further elaborations on any part of the covenant thereof. These loopholes in law had been time and again misused by parties either to legitimise their act of terror or to subdue political opponents and resistance.

For example, one of the situations to be mostly disputed over the right to self-determination is the situation in Palestine. The situation was very heavily disputed that to further scrutinise it, will need another separate study. For the purpose of this study, one of the disputes that can be highlighted is the status of Hamas in international law. Hamas, since the tragedy of September 11, was one of the groups that had been widely designated as a terrorist organisation by the Member of United Nations⁷. However, this designation has strongly been opposed and the group cause is recognised as a form of legitimate resistance by most of the Islamic State Members.

The judgment by the General Court of the European Union in 2019 that repeal all the previous rulings that allow the designation of the group as a terrorist group by the Council of European Union since 2003 which was overturned by the following judgement in 2021 has once again highlighted the lacuna of law in the right to self-determination⁸. The change of Turkey's standing in the designation following the change of ruling political party also shows that as of now, due to the lacuna of law in the right to self-determination and terrorism, a resistance movement can be designated as a terrorist organisation based on the current States political stand.

What happened to Hamas is not an isolated case. Various records of freedom fighters being designated as terrorist groups and vice versa have been reported. This included stating a few, The Moro Islamic Liberation Front in Mindanao, the Chechen Republic of Ichkeria in Chechnya and also the misused of the Islamic State of Iraq and

⁷ Australia (since 2003), New Zealand (Since 2010), Canada (Since 2002), Japan (Since 2005), United Kingdom (since 2001), Saudi Arabia (2014), Jordan (1999) and etc.

⁸ See *Hamas v Council of the European Union (Judgement)* [2019] EUECJ T-308/18; *Council of the European Union v Hamas (Judgement)* [2021] CJEU C-833/19 P.

the Levant (ISIS). Based on the various articles on the conflicts that happened in the fight for self-determination, a very obvious issue can be noted down, which is the existence of grey areas in the interpretation of the right to self-determination and terrorism under international law. Certain states had proven to be adversely assertive in the fight against terrorism despite the lack of a definite definition of the term 'right to self-determination' and 'terrorism' under international law. The lack of a definite definition of the terms caused a major setback in differentiating the criminal act and the legal rights of people provided in international law.

The research will attempt to identify these lacunas in the interpretations. It will review the protection provided under the right to self-determination as provided in Article I of the Charter of the United Nations and other legal documents. It will examine the intent of the members in affirming the right to self-determination as a hard law and the protection intended. The research will then ascertain whether the struggle is protected by the right and the extent of protection it provided.

The research will also analyse the ongoing and successful struggle for self-determination in certain countries. It will examine legal patterns of construing the right to self-determination in the successful struggle and compare it with others. A study on the comparison of the legal patterns construed with the designated terrorist groups will also be done to determine the demarcating criteria.

1.3 RESEARCH METHODOLOGY

This research is a qualitative study which adopts the doctrinal research methodology based on a library-based approach through literature review, case studies and document analysis. The study involves seeking and analysing data from primary and secondary sources such as official United Nations reports and other related documents, inter alia international conventions, governmental documents, and case reports, journals, textbooks, proceedings and other relevant sources.

Once the data is collected, the approach involves analysing existing national and international laws, memorandums, and conventions on the right to self-determination and terrorism as practised in the past and recent years. This includes an examination of international legal instruments providing for the right to self-determination and counterterrorism, Resolutions of the UN and other related international conventions and memorandum including those on the conflicting states. The triangulation method was used to increase the credibility and validity of the findings. By doing so, the grey areas between self-determination and terrorism can be identified.

Furthermore, several case studies are also undertaken to explore how the result of the struggle for self-determination was affected by the designation of the freedom fighters as terrorists and the acquiescence of the international community to the designation. They are selected based on the legitimacy of the right to self-determination claim, the existence of intimidation tactics used by national liberation movements against civilian populations, the maturity of the legal development of the case, the volume of scholarly and jurisprudential discussion on the matter, the existence of opinions or judgments from any international legal authority on the conflict, and the

involvement of the UN, any state, or any Permanent Member of the UN Security Council. This will enable an evaluation to be carried out to discover the legal patterns existing in self-determination. A list of legal criteria to demarcate it from terrorism could be compiled based on the evaluation.



LEGAL CRITERIA OF THE RIGHT TO SELF-DETERMINATION IN RELATION TO TERRORISM UNDER INTERNATIONAL LAW				
Problem Statement: There is No Governing Law Over the External Right to Self-Determination				
	Research Questions	Research Objectives	Methodology	Coverage
1	What is the legal position of the right to self-determination under international law?	To examine the legal position of the right to self-determination under international law.	Doctrinal Research through literature review and document analysis. Data are triangulated to ensure their validity.	Chapter 2: The Right to Self-Determination: A Cardinal Principle of Modern International Law; and Chapter 3: Conflicting Issues in Exercising the Right to Self-Determination
2	What are the legal patterns of construing self-determination in relation to terrorism in selected case studies?	To analyse the legal patterns of construing the right to self-determination in relation to terrorism in selected case studies.	Doctrinal Research through literature review, document analysis and case studies. A comparison of data from selected case studies is analysed to determine its legal pattern. Data are triangulated to ensure their validity.	Chapter 3: Conflicting Issues in Exercising the Right to Self-Determination; and Chapter 4: Juxtaposition of Right to Self-Determination and Terrorism
3	How should self-determination be demarcated from terrorism under international law?	To determine legal criteria for the interpretation of the right to self-determination to demarcate it from the act of terrorism under international law.	Doctrinal Research through literature review, document analysis and case studies. A comparison of data from selected case studies is made to determine legal criteria. Data are triangulated to ensure their validity.	Chapter 4: Juxtaposition of Right to Self-Determination and Terrorism

Table 1.0: Summary of Research Methods

1.4 RESEARCH QUESTIONS

The main aim of the research is to answer the question on “How the lacuna in the interpretation of the right to self-determination would deny the exercise of this right by the rightful people in relation to terrorism?” This question will be possibly answered by posing the following questions:

- i. What is the legal position of the right to self-determination under international law?
- ii. What are the legal patterns of construing self-determination in relation to terrorism in selected case studies?
- iii. How should self-determination be demarcated from terrorism under international law?

1.5 RESEARCH OBJECTIVES

There are three objectives to be achieved in this thesis, namely:

- i. To examine the legal position of the right to self-determination under international law;
- ii. To analyse the legal patterns of construing the right to self-determination in relation to terrorism in selected case studies;
- iii. To determine legal criteria for the interpretation of the right to self-determination to demarcate it from act of terrorism under international law.

1.6 LITERATURE REVIEW

The researcher has undertaken vast research on the literature review in the area of international conflict studies by looking into two-way research; from the right to self-determination and terrorism legal aspects of the respective subjects. The question sought to be answered is whether there are grey areas in the interpretation of the right to self-determination and terrorism. The question of the existing legal patterns in successful self-determination and how it differs from the unsuccessful one is also put forth.

Preserving people's rights and maintaining the rule of law is not an easy task for the authority to look upon. Even with a minimum mistake, the rights of the masses will be fiddled with, and justice cannot be served according to the rule of law. By seeing into these facts, the researcher strongly believes that the issue of the existing grey areas in the interpretation of the right to self-determination and terrorism should be accosted properly so that no loopholes can contribute to injustice to the masses in general. As such, the researcher has listed down the literature review in the respective area for the guidelines of this research so that it will be purely focused and steered in the right manner. Among the relevant articles, thoughts, comments, and chapters of the book are as follows:

The literature on the right to self-determination discusses primarily the issues pertaining to the meanings of the right of self-determination, the sovereignty of states and conflicts in pursuance of the right. Nevertheless, as has been stated before, issues on the right of self-determination are habitually never-ending and virtually inexhaustible in nature.

For example, in the article "National Minorities and Secession Today: Surpassing the Right to Self-Determination" by Joan Ridaó Martín in 2017, the author brought to light the argument on the right to secession, which is not recognised in the International Law, on how it contradicts with the right to self-determination, which was recognised (Martín, 2017). As a Spanish jurist, the author brought an in-depth discussion on the topic with a special reference to the case of Catalonia, Spain. The article further discussed the topic of the unilateral declaration of independence albeit the lack of dominion state recognition with heavy reference to Kosovo along with other cases. However, although the article discussed the topic extensively, it lacks a definite conclusion or commentary on behalf of the author. The issues are not answered adequately.

Besides that, in a conference entitled "International Law Needs to Adapt to a New Perception of Nations" by Moritz Röchow in 2014, he discussed in depth who is entitled to the right to self-determination and the factors that made one entitled (Röchow, 2014). However, there is a lack of discussion on the role of other nations in acknowledging the right of a nation to self-determination and its sovereignty as opposed to the current practice of international law.

In another literature "The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention" reported by Dr Michael C. van Walt Praag and Onno Seroo for the UNESCO International Conference of Experts in Barcelona in 1999, the experts had thoroughly examined the role of the right to self-determination as conflict prevention (Praag & Seroo, 1999). Nonetheless, they failed to point out the position of the dominion state in cooperating with the emerging nation in its extensive discussion as it was one of the crucial issues in executing the right to self-determination.

In the article "Self-Determination and Autonomy: Between Secession and Internal Self-determination" by Peter Hilpold in 2017, the author discussed the concepts of Self-determination extensively (Hilpold, 2017). He brought to light the dispute on whether the claim to self-determination is of a political nature or constituted as a right in itself. It was fascinating that the discussion was done by highlighting the historical standpoint and changes to the claim to self-determination as it evolves throughout time. However, though the article managed to highlight the crucial issues of the claim to self-determination, it failed to touch on how the superpower nations in the United Nations influences affect the claims.

On the other hand, in a journal article entitled "Superpower Responsibility for State Recognition: Charting a Course for Nagorno-Karabakh" by Amit K. Chhabra in 2013, this article broached the issues relating to the existence of Superpower States in enabling the exercise of the right to self-determination (Chhabra, 2013). Regardless, the article failed to enlighten the effects of their existence in pursuance of the right and international law in determining a new nation.

In a journal article by Setsuko Kawahara entitled "Self-Determination: People's Will or Strategic Interest?" in 2015, the author supported the notion that the right of self-determination has a significant degree of ambiguity that may jeopardise the principle of human rights itself (Kawahara, 2015). In the article, the author extensively discussed the subject and scope of the determination. The author stressed the importance of strategic interest as opposed to people's will in searching for a harmonious way of self-determination. In the article, the author used some cases of self-determination to highlight this importance. However, it must be stated that none of the cases used is of unsuccessful self-determination. The author also made a passing remark on ethnic and

religious nationalists with no further discussion on the latter in the legitimacy of self-determination.

On terrorism, the literature mainly discussed the severe effect of the act and the counter-action against it. These include the discording view on the important matter of security and human rights. Some of the literature also discussed the absence of a universally accepted definition of terrorism and the issues arising from it. Nevertheless, terrorism has been an ongoing issue that has yet to be seen at its end, especially on the fact that there is yet to be a hard law providing the provisions for it in international law.

For instance, in "Counter-Terrorism, Human Rights and the Rule of Law" edited by Aniceto Masferrer and Clive Walker in 2013, the book discussed extensively the conflicts between counterterrorism and human rights at the international level (Masferrer & Walker, 2013). The book explored the topic of counterterrorism beyond the boundaries of ethics, legal and organisation in pursuance of effectively curbing the danger.

In another literature entitled "Taking off the Gloves: Terrorists as *Hostis Humani Generis*" by Clancey S. Henderson in 2018, the author discussed the necessity of including terrorists as part of *Hostis Humani Generis* (Enemy of Mankind) to optimise the necessary action needed to handle terrorist threats which include the justification of the use of force (Henderson, 2018). By including terrorism in the legal principle, the author asserted that this would allow the states to "employ all combat power available in the most effective way possible" thus highlighting the importance of the economy of force. The author demonstrated way how the current international law

can adapt to the changes should terrorist is included in the principle of *Hostis Humani Generis*.

Despite that, the author failed to discuss in depth the implication of the absence of a universal definition of terrorism in including the terrorism in the principle of law. The author though does put a suggestion approaching a group-by-group method in identifying terrorists that the state members must universally acknowledge. However, it can be presumed that the suggestion is more idealistic rather than realistic due to the fundamental core of differences is not settled and thus may put a greater danger to the protection of human rights. It must be highlighted that the author compared the fight against terrorists to controlling open fire.

In "Defining Terrorism in International Law" by Ben Saul in 2006, the author discussed the many aspects of the importance of terrorism (Saul, 2006). As the title suggested, the author focused on the importance of defining and criminalising terrorism in international law. He proposed the basic elements that make up a probable universally accepted definition of terrorism in international law. In doing so, he analysed the existing factors that may influence the definition and included possible justification and exceptions used by terrorists which include the self-determination struggles, state terrorism and armed conflict.

Nevertheless, it is crucial to be highlighted that the author did not make a detailed discussion regarding the exception of terrorism. The author renounced the exception in his discussion as he highlighted the exception as part of justification and excuses to legalise terrorism. This might be due to the fact that the author made an emphasis on avoiding any use of force which is considered an act of violence as a

recourse. This also includes the struggle for independence and the right to self-determination.

In another aspect of the research, several publications have also been reviewed where the use of force in exercising the right to self-determination was specifically studied in the context of the war against terrorism. In many circumstances, due to the lack of specific provisions governing the right to self-determination and a unified definition of terrorism, some struggles for self-determination have been gravely affected by the war against terrorism.

In the article "9/11 and Self-Determination" by Elizabeth Chadwick in 2012, the author explored the adverse effects in the decade following the war against terrorism waged in the wake of the 9/11 attack (Chadwick, 2012). The author highlighted that although "armed conflict" and "terrorism" are distinct from one another in legal terms, state decision-makers find that utilizing their own domestic rules for deterring terror as opposed to fulfilling the IHL obligation is far too useful. The war on terror was highlighted for not only transforming global capital into a highly effective political actor in state decision-making but also for furthering the corrupted gap between internal and external policing.

Interestingly, the author proposes a new outlook on the right to self-determination. Opposed to the idea that it was incorporated as an inherent right, she proposes that the right was put in place as an encouragement to the state government to govern with a representative and non-discriminatory "legitimacy" and that everyone has a right to be protected equally by his or her government.

In another article entitled "Self-Determination and Terrorism: Creating a New Paradigm of Differentiation" by Lieutenant Andrew Coffin in 2014, the author explored the right to use force in pursuit of external self-determination (Coffin, 2014). Both the right to self-determination and terrorism were examined extensively. In the article, the author listed three criteria before recourse to force can be taken: (1) the people have a territorial bond; (2) they were deprived of internal self-determination; and (3) they must exhaust all political and judicial remedies. It was proposed that by fulfilling these criteria, a subgroup would be classified as a national liberation movement and protected under international humanitarian law. However, the author failed to take into account the element of abuse of human rights in *extrimis*, as stated in the Kosovo Advisory Opinion, which differed from the case of *Quebec* in his observation of the criteria.

It was further proposed by the author that transgressing Common Article 3 of the Geneva Convention will revoke the protection provided by international humanitarian law for the group. This was not enunciated in any part of international humanitarian law's legal provisions but merely based on the presumption that failing to comply with common Article 3 amounts to contempt of the law, thus rendering the group not entitled to the protection provided by the law. This observation could be considered biased in favour of the state's interests given that both parties' status made any transgression have a very distinct impact on their right to use force.

A part of the literature review had also been done on some case studies on states that had faced struggles for self-determination. Though the right to self-determination has yet to be defined, there had been various instances where the right had been executed and a few cases where the people managed to achieve their self-determination.

One of the prominent struggles for self-determination is in the State of Palestine. The struggle of the People of Palestine has been decidedly to be quite sensitive in the international communities as it involved one of the biggest mistakes or wrongs ever done in the history of mankind. In a documentary by BBC Radio 4 in 2017 titled "Balfour Promised Land", a study was done by the historian David Reynolds on the root of the unending conflict in the West Bank which is the Balfour Declaration (Reynolds, 2017). The documentary explores the history of Palestine mainly regarding the crucial role played by the British Empire during World War II. The document of the Balfour Declaration was scrutinised by historians concerning the legality of the occupation of Palestine.

One of the disputed factors in the struggle of the People of Palestine is the designation of the West, especially, the British and the United States of America, on most Palestinian liberation movements, in particular, Hamas, as terrorist organisations. This fact had been continuously disputed by some states as biased and unfounded. In the article "Hamas: A Terrorist Organisation or Liberation Movement?" by Yousef M. Aljamal in 2014, the author examined and compared the movement with its counterpart, the Israel Likud Party. The author alleged that the designation was unfounded and has no justification. He urged for Hamas to be officially included in the talk for a lasting peaceful resolution and acknowledged as a legal representative of the people of Palestine. The author had approached the problem of distinguishing a designated terrorist group from its legally recognised counterpart. This approach may be used to distinguish a legal method of exercising self-determination and terrorist act.

Another case study reviewed is on the territorial dispute between Russia and Chechnya. In an article entitled, "Chechnya and the Right of Self-Determination" by

Cherylyn Brandt Ahrens in 2004, the author proposed that the people of Chechnya are only entitled to internal self-determination, which excludes the possibility of secession (Ahrens, 2004). He argued that external self-determination is only available in the colonial context of seeking independence, as per the remedial approach to self-determination which he purported to have legal support. This is in opposition to the plebiscite approach which regards all people are entitled to self-determination as a matter of right regardless of their current political status. The author also stressed the importance of independence to be accented by the dominion state for the people to have the right to self-determination. It must be highlighted that the author failed to consider the very aspect of absence to methods in exercising the right to self-determination which had opened an endless possibility for it to be interpreted and grossly ignored in his conviction of the remedial approach to self-determination.

However, it must be noted that many of the observations and writings lack the ability to judge the situation and position indiscriminately. The authors can be seen to be leaning toward one side of thought as against the other. This might be due to the nature that the documents related to this particular issue are diverse in language and the lack of language ability might cause the authors to not be able to include some of the crucial documents. The reason that these works of literature are important is to show where international law failed to do justice due to its nature.

1.7 SCOPE AND LIMITATION

The scope of the research that will be conducted on this topic is done primarily to distinguish and analyse the existing legal patterns pertaining to the grey areas

between the right to self-determination and terrorism under international law by looking into the relevant treaties, resolutions, statutes and other relevant aspects on the respective issues.

The researcher will limit the research by emphasising and focusing on the issues of the right to self-determination in the aspect of external self-determination or total self-determination. The study of the struggles for self-determination will be based on this aspect. Unless mentioned otherwise, further discussion on self-determination will be understood as a reference to external self-determination.

To adhere to the research goal, the debate on violent extremism and radicalisation will not be explored in discussing the definition of terrorism. The research will keep the discussion of terrorism's definition to that of the term itself.

For the sake of discussion, as the focus of this research is on national liberation movements, individuals within a *levée en masse* which is a lawful combatant in a completely different category under Article 4 (6)⁹, will not be included in the discussion on designation of people as terrorists. The research will limit discussion to national liberation movements that have organised into military forces to oppose foreign or alien occupation.

The researcher will also include brief case studies of the ongoing, successful and unsuccessful struggles for self-determination which are selected based on the methods mentioned. The cases selected are East Timor, Kosovo, Chechnya and Palestine. The

⁹ ... (6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war. See Article 4A (2) of Third Geneva Convention, 1929.

researcher, however, will not include detailed and extensive discussions of the situation in each of the referred cases. Several cases, including recent ones, of struggles for self-determination may be mentioned without further exploration.

As such, the researcher will include the most relevant and precise information in this thesis so that it will be benefitted and can be shared for the sake of the development of the right to self-determination and counter-terrorism laws.

As per the limit of the research, due to the nature of the research that will be focusing on the international struggle of the countries selected, the researcher had a limitation to get primary sources or direct studies in its own language to further understand the stands of the people affected. Some of the critical literature, judicial and scholars' opinions, and case laws referred to will either be a translated article or manually translated by the researcher if it was not originally in the language understood by the researcher.

1.8 CHAPTERISATION

The present thesis “Legal Criteria of Right to Self-Determination in Relation to Terrorism under International Law” consists of five chapters including a chapter each on an introduction and conclusion.

Chapter One is an introduction chapter. This chapter focuses on the background and conceptual framework of the research. The chapter discusses the lack of a governing law on the right to self-determination under international law and highlights how the struggle for self-determination has been impacted by the absence of a universal accepted

definition of terrorism as a statement of the problem. To better comprehend what will be researched during this research, this chapter also discusses the research questions and objectives. This chapter also includes the research methodology employed in this study. This chapter addresses the literature review on the right to self-determination, terrorism as well as any related discussions to provide information on the conceptual framework of the research.

In the following chapter, Chapter Two, it examines the international provisions related to right to self-determination. It is intended to understand the legal status of the right to self-determination under international law. In this chapter, it focuses on what the international community intended when it first incorporated self-determination as a legal right. As this research is aimed to develop legal criteria to right to self-determination, the analysis on the rights included the meaning of the term “peoples” used in order to identify the scope and extend of the right. Through the scrutinization of various legal provisions, the discussion seeks to ascertain who has the right to self-determination and who does not.

In Chapter Three, the discussion focuses on a variety of conflicting issues resulting from exercising the right to self-determination. It is important to include issues stemming from the contrasting nature of the right to self-determination and states’ sovereignty and right to territorial integrity. In this chapter, the state’s right to defend its sovereignty and territorial integrity is analysed in order to ascertain if it was improper for the law to grant two opposing rights. This chapter also discusses the issue of the designing national liberation movements as terrorist organisations. In order to understand the core of the issue, the legality of the use of force in exercising right to self-determination, the problem of prosecuting terrorism under international law and the

application of the unlawful combatant status on national liberation movements design as terrorist organisation is analysed. The argument on the national liberation movements recognition as legal representatives of the people is also analysed in order to examine whether the national liberation movements have the legitimacy to exercise their right to self-determination.

In the fourth chapter, "Juxtaposition of the Right to Self-Determination and Terrorism", the chapter explores a number of case studies on both successful and unsuccessful national liberation movements. A general comparison of the cases was included and legal criteria for right to self-determination based on the comparison is suggested at the end of the chapter. This chapter critically analyses how the struggle for self-determination has a differing outcome. The inconsistencies between the cases despite having the same circumstances are analysed to identify the legal patterns existed. At the end of the chapter, legal criteria for the right to self-determination are generated based on the legal patterns identified in the case study analysis.

In the last chapter, Chapter Five, a conclusion is made based on the objective of the research, which was to demarcate the right to self-determination from terrorism under international law. In this chapter, it is concluded that there are legal criteria that can be used to demarcate the right to self-determination from acts of terrorism. It is argued that as the use of law in the exercise of self-determination is permitted and governed by international humanitarian law, acts of terror by the national liberation movement should not be prosecuted as an act done under normal circumstances.

In the final chapter, too, three recommendations are made to ease the demarcation of the right to self-determination and acts of terrorism under international

law. The first proposal is to establish extreme oppression as one of the criteria for self-determination. The second proposal is to recognise that acts of terror by freedom fighters are governed by international humanitarian law. The last recommendation is the need for limitations on the veto power of the United Nations Security Council Permanent Members.

1.9 CONCLUSION

The right to self-determination is the fundamental principle of international law. It embedded the principle of tolerance and respect among nations. However, as idealistic as it is sound, the right to self-determination has its own problems and issues.

In August 1919, eighteen months after Wilson's famous 14-points-statement, he admitted to the United States Senate:

"When I gave utterance to those words, I said them without knowledge that nationalities existed, which are coming to us day after day! You do not know and cannot appreciate the anxieties that I have experienced as the result of these many millions of people having their hopes raised by what I said."

This brought to contrast that the idea of self-determination, albeit its own values and necessities, had first been introduced with a lack of information and knowledge of what may rise from it.

The main features of these hopes are either the hope for an independent state or the hope to unite with another state. However, in reality, every state and nation will prefer to be in power over another. The possibilities of occupation and chaos will make each state try to overpower another. In the fight for independence, for example, though embedded as one of the recognised rights, the state with the majority power

will steadfastly hold on to their belief that the fight is illegal and did not comprise international law.

The escalating conflict by the global terror organisations in recent years has further complicated the struggles in exercising the right to self-determination. Countless innocent citizens had died including women and children. With the growing concern and fear of the blind attack that did not differentiate its victim, the authorities and the international community had been hard on the matters. As such, countless campaigns against terrorism had been done with the notable War on Terror declared by the United States of America (Chadwick, 2012).

However, the campaign of counterterrorism, without a universally accepted definition of what constituted terrorism, had almost made the noble fight into a mindless and partial attack in the interest of the state. Doubtful issues had been raised in the international community, questioning the justification of the attack that seemed to be a defence by the state to prosecute anything that may jeopardise its interest and sovereignty.

Calculating the additional value of each step taken will have the tendencies of partiality in exercising counterterrorism and the right to self-determination. As per the practices, a nation can self-determine itself, but it takes the other nations' acknowledgement, for it to have legal rights and status. As of that, this research aims to create a demarcation line that may separate the interest of counterterrorism and the right to self-determination to assist in the betterment of the fight against terrorism while respecting the right to self-determination and complementing the other works of literature in this study.

It can be understood from the various declarations on human rights, a right is only created in the event that every party respects and relents the other. Failure to

respect is a failure of the right. As in the case of the right to self-determination, the dominion state and other states have to play a great role in respecting the right, thus allowing the formation of the new state without prejudice.

